

## TITLE 13. ENVIRONMENT

### IC 13-17. AIR POLLUTION CONTROL

#### IC 13-17-1. INTENT AND PURPOSE OF AIR POLLUTION CONTROL LAWS

##### IC 13-17-1-1 ----- Intent and purpose of air pollution control laws: stated

It is the intent and purpose of air pollution control laws to maintain the purity of the air resource of Indiana, which shall be consistent with protection of the public health and welfare and the public enjoyment of the air resource, physical property and other resources, flora and fauna, maximum employment, and full industrial development of Indiana. The air pollution control board and the department shall safeguard the air resource through the prevention, abatement, and control of air pollution by all practical and economically feasible methods.

*[As added by: P.L.1-1996, §7.]*

##### IC 13-17-1-2 ----- Intent and purpose of air pollution control laws: role of local programs

Local and air quality basin control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

*[As added by: P.L.1-1996, §7.]*

##### IC 13-17-1-3 ----- Intent and purpose of air pollution control laws: means of accomplishment

Accomplishing the intent and purpose of air pollution control laws can be done most effectively by focusing on goals to be achieved by a maximum of cooperation among all parties concerned, and the rules established under this article should be clearly premised upon scientific knowledge of causes as well as of effects.

*[As added by: P.L.1-1996, §7.]*

#### IC 13-17-2. ESTABLISHMENT OF AIR POLLUTION CONTROL BOARD

##### IC 13-17-2-1 ----- Establishment of APCB: board established

The air pollution control board is established.

*[As added by: P.L.1-1996, §7.]*

##### IC 13-17-2-2 ----- Establishment of APCB: membership

The board consists of the following eleven (11) members:

- (1) The following ex officio members:
  - (A) The commissioner of the state department of health.
  - (B) The director of the department of natural resources.
  - (C) The lieutenant governor.
- (2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:
  - (A) One (1) representative of agriculture.
  - (B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.
  - (C) One (1) representative of environmental interests.
  - (D) One (1) representative of labor.
  - (E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

*[As amended by: P.L.90-1998, §17.]*

### **IC 13-17-2-3 ----- Establishment of APCB: political affiliation**

Not more than four (4) of the appointed members of the board may be members of the same political party.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-2-4 ----- Establishment of APCB: limitations on members**

The board must have at least a majority of members who:

(1) represent the public interest; and

(2) do not derive any significant part of their income from persons subject to permits or enforcement orders under the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549).

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-2-5 ----- Establishment of APCB: disclosure of conflicts**

Each board member shall fully disclose any potential conflicts of interest relating to permits or enforcement orders under the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549).

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-2-6 ----- Establishment of APCB: ex officio representatives**

An ex officio member of the board may designate in writing a technical representative to serve as a voting member of the board when the ex officio member is unable to attend a board meeting.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-2-7 ----- Establishment of APCB: term of members; filling vacancies**

(a) The term of an appointed member of the board is four (4) years.

(b) The term of each member of the board continues until a successor has been appointed and qualified.

(c) If a vacancy occurs in the appointed membership of the board, the governor shall appoint a member not later than sixty (60) days after the vacancy occurs for the remainder of the unexpired term created by the vacancy. The board shall suspend the exercise of the board's duties under the air pollution control laws if the vacancy has not been filled not later than sixty (60) days after the vacancy occurs.

(d) The governor may remove an appointed member of the board for cause. Cause includes the failure to attend at least two (2) board meetings within a one (1) year period.

(e) The board may not adopt a final rule under IC 13-14-8 until all members of the board have been appointed.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-2-8 ----- Establishment of APCB: compensation of members**

(a) The ex officio members of the board serve without additional compensation.

(b) Each appointed member of the board is entitled to the following:

- (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
- (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
- (c) The per diem and mileage are valid claims against the department.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-2-9 ----- Establishment of APCB: meetings**

(a) The board shall hold at least six (6) regular meetings each year at a place and time to be fixed by the board.

(b) Special meetings of the board may be called by:

- (1) the chairman; or
- (2) three (3) members of the board;

by delivery of written notice to each member of the board.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-2-10 ----- Establishment of APCB: quorum**

Six (6) members of the board, four (4) of whom must be appointed members of the board, constitute a quorum.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-2-11 ----- Establishment of APCB: chair and vice-chair**

The governor shall annually select:

- (1) one (1) of the eight (8) appointed members of the board to serve as chairman; and
- (2) another of the appointed members of the board to serve as vice chairman.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-2-12 ----- Establishment of APCB: technical secretary**

(a) The board shall select, from a list of three (3) qualified individuals recommended by the governor, an independent third party who is not an employee of the state to serve as technical secretary of the board.

(b) During the interim between meetings of the board, the department shall do the following:

- (1) Handle correspondence.
- (2) Make or arrange for investigations and surveys.
- (3) Obtain, assemble, or prepare reports and data as directed by the board.

(c) The technical secretary shall review all materials prepared for the board by the department to make any necessary revisions. Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary. The technical secretary is not a voting member of the board.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-2-13 ----- Establishment of APCB: legal counsel**

(a) The board may select, from a list of three (3) qualified individuals recommended by the governor, an independent third party who is not an employee of the state to serve as legal counsel. The legal counsel shall do the following:

- (1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.
- (2) Review all materials prepared for the board by the department for legal accuracy and sufficiency and direct the department to make any necessary revisions.

(b) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-3. POWERS AND DUTIES CONCERNING AIR POLLUTION CONTROL**

#### **IC 13-17-3-1 ----- Powers and duties concerning air pollution control: IDEM assistance to local government**

The department shall provide assistance on air pollution matters to towns, cities, and counties.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-3-2 ----- Powers and duties concerning air pollution control: commissioner may conduct inspections**

The commissioner may conduct inspections under air pollution control laws in accordance with IC 13-14-2.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-3-3 ----- Powers and duties concerning air pollution control: enforcement**

Air pollution control laws may be enforced under IC 13-14-2-6 or IC 13-30-3.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-3-4 ----- Powers and duties concerning air pollution control: APCB to adopt rules**

(a) The board shall adopt rules under IC 4-22-2 that are:

- (1) consistent with the general intent and purposes declared in IC 13-17-1 and section 1 of this chapter; and
- (2) necessary to the implementation of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L.101-549).

(b) Notwithstanding IC 13-15-5, the board may adopt rules under IC 4-22-2 and IC 13-14-9 that allow the commissioner's actions on permits and permit modifications to become effective immediately, regardless of whether a thirty (30) day comment period is held on the permits or permit modifications. The board may adopt rules under this subsection only after considering the:

- (1) environmental significance of;
- (2) federal requirements for federally delegated or approved programs concerning; and
- (3) need for opportunity for public participation on;

the permits or permit modifications.

[As amended by: P.L.90-1998, §18.]

#### **IC 13-17-3-5 ----- Powers and duties concerning air pollution control: penalties for violations**

Violations of air pollution control laws are subject to the penalties imposed by the following:

- (1) IC 13-30-4.
- (2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-6 ----- Powers and duties concerning air pollution control: APCB to develop operating policies**

The board shall develop operating policies governing the implementation of air pollution control laws by the commissioner.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-7 ----- Powers and duties concerning air pollution control: agreed orders; review**

(a) The commissioner may enter into agreed orders as provided in IC 13-30-3-6.

(b) An environmental law judge under IC 4-21.5-7 shall review orders and determinations of the commissioner.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-8 ----- Powers and duties concerning air pollution control: board duties**

The board shall carry out other duties imposed by law.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-9 ----- Powers and duties concerning air pollution control: commissioner to cooperate with other groups**

(a) The commissioner shall assist and cooperate with other groups interested in and affected by air pollution.

(b) The commissioner may do the following:

(1) Advise, consult, and cooperate with:

(A) other state agencies;

(B) towns, cities, and counties;

(C) industries;

(D) other states;

(E) the federal government; and

(F) affected groups;

in the prevention and control of new and existing air contamination sources within Indiana.

(2) Encourage and conduct studies, investigations, and research relating to the following:

(A) Air pollution.

(B) The causes, effects, prevention, control, and abatement of air pollution.

(3) Collect and disseminate information relating to the following:

(A) Air pollution.

(B) The prevention and control of air pollution.

(4) Encourage voluntary cooperation by persons, towns, cities, and counties or other affected groups in restoring and preserving a reasonable degree of purity of air within Indiana.

(5) Encourage authorized air pollution agencies of towns, cities, and counties to handle air pollution problems within their respective jurisdictions to the greatest extent possible.

- (6) Upon request, provide technical assistance to towns, cities, or counties requesting technical assistance for the furtherance of air pollution control.
- (7) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to the control of air pollution.
- (8) Accept and administer grants or other money or gifts for the purpose of carrying out any of the functions of air pollution control laws.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-10 ----- Powers and duties concerning air pollution control: budget authority**

The commissioner may budget and receive appropriated money for expenditures to carry out air pollution control laws.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-11 ----- Powers and duties concerning air pollution control: APCB may adopt rules under authority of CAA and regulations**

The board may adopt rules under IC 4-22-2 under discretionary authority granted to the state by:

- (1) the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L.101-549); or
- (2) a regulation adopted under the federal Clean Air Act.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-12 ----- Powers and duties concerning air pollution control: additional rulemaking authority of APCB**

Unless otherwise indicated, any express grant of authority provided to the board under this title may not be interpreted to prohibit the board from adopting rules that extend the grant of authority to cover additional activities in accordance with section 4 of this chapter or IC 13-14-8.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-13 ----- Powers and duties concerning air pollution control: limits on solid waste incinerator permit issuance**

The commissioner may not issue any permit to a solid waste incinerator required by the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549), if the commissioner is also responsible in whole or in part for the design, construction, or operation of the unit.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-14 ----- Powers and duties concerning air pollution control: APCB to adopt rules classifying regions of state with respect to attainment and setting standards for ambient air quality**

The board shall adopt rules under IC 4-22-2 that do the following:

- (1) Classify regions into attainment areas and nonattainment areas for regulated air pollutants based upon scientific study of geographical, topographical, and meteorological data.
- (2) Set standards for ambient air quality for each region to effectuate the purposes of air pollution control laws.

[As added by: P.L.1-1996, §7.]

**IC 13-17-3-15 ----- Powers and duties concerning air pollution control: APCB may adopt rules relating to noise**

(a) The board may adopt rules and standards prescribing limitations on noise emission. In adopting rules under this section, the board may prescribe that a person may not emit or cause to be emitted any noise that:

- (1) unreasonably interferes with any lawful business or activity; or
  - (2) is injurious to the health or well-being of any person.
- (b) The board may adopt rules concerning the following:
- (1) Equipment and procedures for monitoring noise.
  - (2) The collection and retention of data resulting from the monitoring.
  - (3) The reporting of data to the board.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-4. AIR POLLUTION EMERGENCIES**

**IC 13-17-4-1 ----- Air pollution emergencies: policy statement**

The discharge into the outdoor atmosphere of air contaminants that would cause air pollution and create a public nuisance is contrary to the public policy of the state and this article.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-4-2 ----- Air pollution emergencies: declaration by governor**

(a) Air pollution may at certain times and places so seriously affect the public health and so threaten the population as to warrant emergency powers to prevent or minimize disasters of unforeseen proportions. If the commissioner determines, in consultation with the commissioner of the state department of health, that air pollution in an area constitutes an unreasonable and emergency risk to the health and safety of those in the area, that determination shall be immediately communicated to the governor.

(b) The governor may, by proclamation, do the following:

- (1) Declare that an emergency exists.
- (2) Order all persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-4-3 ----- Air pollution emergencies: injunctive proceedings must be initiated within 24 hours**

(a) Not more than twenty-four (24) hours after issuance of a proclamation under section 2 of this chapter, the attorney general, at the request of the governor, shall initiate injunctive proceedings in the appropriate court against each person causing or contributing to the air pollution to:

- (1) stop the emission of contaminants causing the pollution; or
- (2) take other action that is necessary.

(b) If the attorney general does not commence an action within the twenty-four (24) hour period, the governor's proclamation becomes void.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-5. MOTORVEHICLE EMISSION CONTROL**

**IC 13-17-5-1 ----- Motor vehicle emission control: APCB may adopt rules; limitation**

The air pollution control board may adopt rules for the control of emissions from vehicles. However, the board must, before adopting the rules, forward to each member of the

general assembly a copy of the proposed rules. The rules may prescribe requirements for the following:

- (1) The installation and use of equipment designed to reduce or eliminate emissions.
- (2) The proper maintenance of that equipment and of vehicles.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-5-2 ----- Motor vehicle emission control: limitations on rules**

Any rules proposed for adoption under section 1 of this chapter must be consistent with provisions of federal law relating to control of emissions from vehicles. The board may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed for the control of emissions from vehicles if the feature or equipment has been certified, approved, or otherwise authorized under federal law.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-5-3 ----- Motor vehicle emission control: obligation to maintain**

Except as permitted or authorized by law, a person may not:

- (1) fail to maintain in good working order; or
- (2) remove, dismantle, or otherwise cause to be inoperative;

any air pollution control system or mechanism that is used to control air pollution of a vehicle and that is required by rules of the board to be maintained in or on the vehicle.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-5-4 ----- Motor vehicle emission control: suspension of registration**

The commissioner of the bureau of motor vehicles shall suspend the registration of any vehicle that is not in compliance with section 3 of this chapter and may not reinstate the registration until:

- (1) the emission control equipment of the vehicle has been restored, replaced, or repaired and is in good working order; and
- (2) if the vehicle is subject to a rule of the board requiring testing of the emission characteristics of certain vehicles in certain counties, all requirements of that rule applying to the vehicle have been satisfied.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-5-5.1 ----- Motor vehicle emission control: rules authorizing periodic inspections in certain counties; inspections**

(a) A rule adopted by the board under air pollution control laws that requires:

- (1) certain motor vehicles registered in certain counties to undergo a periodic test of emission characteristics; and
- (2) vehicles failing the emissions test to be repaired and retested;

applies to the vehicles registered in those counties subject to the rules. An exemption in the rules applies to motor vehicles registered in those counties subject to the rule.

(b) An inspection station authorized by a rule adopted by the board may:

- (1) inspect any vehicle; and
- (2) certify that the inspected vehicle meets air emission control standards established in the applicable rules.

(c) The department may contract with a person to conduct inspections to test the emissions or emission control devices of motor vehicles. If inspections are conducted by a contractor under this subsection, the inspections and testing shall be conducted under the direction of the department. The department may not enter into a contract with a foreign corporation under this section unless the foreign corporation is registered with the secretary of state to do business in Indiana.

(d) The duration of a contract entered into under this section may not exceed ten (10) years.

(e) This section does not prohibit the board or the department from adopting fleet inspection procedures.

(f) IC 5-22-17-3 does not apply to a procurement under this section.

[As added by: P.L.229-1999, §2.]

**IC 13-17-5-5.4 ----- Motor vehicle emission control: applicability to certain counties**

(a) This section applies to the following counties:

(1) A county having a population of more than sixty-four thousand (64,000) but less than sixty-five thousand (65,000).

(2) A county having a population of more than eighty-five thousand (85,000) but less than eighty-eight thousand (88,000).

(b) For the purpose of determining the number of inspection stations operating in a county under this subsection, a temporary or portable inspection station counts as an inspection station. After July 1, 1997, the department must maintain in a county under subsection (a) an equal or greater number of inspection stations as were operating in the county on July 1, 1996.

[As added by: P.L.79-1997, §2.]

**IC 13-17-5-6 ----- Motor vehicle emission control: limitations on APCB emissions testing rules**

(a) A rule adopted by the board under air pollution control laws that:

(1) requires periodic motor vehicle emissions tests; and

(2) makes new vehicles exempt from the emissions tests for a time;

may not require that new vehicles be presented at an official vehicle inspection station for the purpose of obtaining a certificate of compliance.

(b) A rule adopted by the board under air pollution control laws that:

(1) requires periodic motor vehicle emissions tests; and

(2) makes certain vehicles exempt from the emissions test due to the length of time since the vehicles were manufactured;

may not require that those vehicles be presented at an official vehicle inspection station for the purpose of obtaining a certificate of compliance.

[As added by: P.L.1-1996, §7.]

**IC 13-17-5-7 ----- Motor vehicle emission control: IDEM to annually advise budget agency on adequacy of program funding**

(a) The department shall annually advise the budget committee on whether:

(1) money appropriated by the general assembly; and

(2) money available through federal grants;

is adequate to implement a motor vehicle emissions testing program described in section 5.1 of this chapter.

(b) If the money described under subsection (a) becomes insufficient to implement a motor vehicle emissions testing program, the department shall immediately notify:

(1) the governor; and

(2) the budget committee;

of the insufficiency.

[As amended by: P.L.229-1999, §3.]

**IC 13-17-5-8 ----- Motor vehicle emission control: violations**

(a) Whenever:

- (1) an officer or employee of the department; or
- (2) a person the department has contracted with under section 5 (before its repeal) or 5.1 of this chapter or IC 13-1-1-11 (before its repeal);

learns of a violation of section 1, 2, 3, or 4 of this chapter or IC 13-1-1-6 (before its repeal), the officer or employee shall notify the bureau of motor vehicles in writing of the violation or failure for purposes of the suspension of the registration of the vehicle in question under IC 9-18-2-39.

(b) After a vehicle's registration is suspended under IC 9-18-2-39:

- (1) an officer or employee of the department; or
- (2) a person the department has contracted with under section 5 (before its repeal) or 5.1 of this chapter or IC 13-1-1-11 (before its repeal);

who recognizes that the violation of section 1, 2, 3, or 4 of this chapter or IC 13-1-1-6 (before its repeal) has been corrected shall notify the bureau of motor vehicles in writing of the correction or achievement of compliance for purposes of the reinstatement of the vehicle's registration under IC 9-18-2-39.

*[As amended by: P.L.229-1999, §4.]*

**IC 13-17-6. REGULATION OF ASBESTOS AND ASBESTOS CONTRACTORS****IC 13-17-6-1 ----- Regulation of asbestos and asbestos contractors: APCB to adopt rules relating to accreditation and licensing**

(a) This section does not apply to a person making an inspection under the authority of IC 22-8-1-1.

(b) The board shall adopt rules under IC 4-22-2 requiring the commissioner to establish a program for the following:

- (1) The accreditation of persons engaged in the inspection, management, or abatement of asbestos containing material.
- (2) The licensing of asbestos contractors.

(c) The board shall, in the rules adopted under this section, do the following:

- (1) Prohibit a person without accreditation or an asbestos contractor without a license from engaging in the inspection, management, or abatement of asbestos containing material at:
  - (A) elementary and secondary schools; and
  - (B) facilities subject to:
    - (i) United States Environmental Protection Agency regulations; or
    - (ii) rules of the board;
 

pertaining to asbestos emission control.
- (2) Require training and examination as a precondition to accreditation.
- (3) Require periodic retraining and reexamination to maintain accreditation.
- (4) Establish minimum requirements for the issuance of an asbestos contractor license, including a requirement that all workers employed by an asbestos contractor to inspect, manage, or abate asbestos containing material be accredited under the program established under this section.
- (5) Extend the applicability of the accreditation and licensing requirements to other facilities as determined by the board.

- (6) Exempt from accreditation and licensing requirements a person that performs work:
  - (A) on a private residential dwelling and commercial residential building with fewer than five (5) dwelling units; and
  - (B) during an emergency that results from a sudden and unexpected event that is not a planned asbestos project.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-2 ----- Regulation of asbestos and asbestos contractors: APCB to adopt rules establishing fees; proceeds to be deposited into asbestos trust fund**

(a) This section does not apply to a person making an inspection under the authority of IC 22-8-1.1.

(b) The board shall adopt a rule under IC 4-22-2 to do the following:

- (1) Establish a fee not to exceed one hundred fifty dollars (\$150) per person per certification for persons seeking accreditation through the program established under section 1 of this chapter.
- (2) Establish a fee for asbestos contractors seeking licensing through the program established under section 1 of this chapter.

(c) The amount of the fee established under subsection (b) must not be more than is considered to be necessary to recover the cost of establishing the accreditation and licensing programs.

(d) The proceeds of the fee shall be deposited in the asbestos trust fund established by section 3 of this chapter.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-3 ----- Regulation of asbestos and asbestos contractors: asbestos trust fund established**

(a) The asbestos trust fund is established to provide a source of money for the purposes set forth in section 4 of this chapter.

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:

- (1) Accreditation fees paid under section 2 of this chapter.
- (2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.
- (3) Penalties imposed under IC 13-30-4 and IC 13-30-5 for violations of the rules of the board concerning asbestos.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-4 ----- Regulation of asbestos and asbestos contractors: uses of fund**

The commissioner may use money in the fund to do the following:

- (1) Pay the expenses of administration of the accreditation program established under section 1 of this chapter.
- (2) Cover other costs related to implementation of the federal Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C. 2641 et seq.).

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-5 ----- Regulation of asbestos and asbestos contractors: contractor to use accredited employees or agents**

An asbestos contractor licensed under this chapter may not allow an agent or employee of the contractor to:

- (1) exercise control over an asbestos project; or
- (2) come into contact with asbestos;

unless the agent or employee is accredited under this chapter.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-6 ----- Regulation of asbestos and asbestos contractors: records of contractor**

(a) An asbestos contractor licensed under this chapter shall compile records concerning each asbestos project the asbestos contractor performs. The records must include the following information on each asbestos project:

- (1) The name, address, and proof of accreditation of the following:
  - (A) The person who supervised the asbestos project for the asbestos contractor.
  - (B) Each employee or agent of the asbestos contractor that worked on the project.
- (2) The site of the asbestos project.
- (3) A description of the asbestos project.
- (4) The amount of asbestos containing material that was removed in the project.
- (5) The date on which the asbestos project was started and the date on which the asbestos project was completed.
- (6) A summary of procedures that were used in the asbestos project to comply with all applicable federal and state standards on asbestos projects.
- (7) The name and address of each disposal site used for the disposal of asbestos containing material that was disposed of on the asbestos project.

(b) A copy of each receipt issued by a disposal site identified under subsection (a)(7) must be included in the records concerning the project compiled under this section.

(c) An asbestos contractor shall retain the records compiled under subsection (a) concerning a particular asbestos project for at least thirty (30) years after the asbestos project is concluded.

(d) An asbestos contractor shall make records kept under this section available to the department upon request.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-7 ----- Regulation of asbestos and asbestos contractors: annual investigation by IDEM**

At least one (1) time each year, the department shall investigate the procedures employed by each licensed asbestos contractor with regard to the:

- (1) abatement;
- (2) removal;
- (3) renovation;
- (4) enclosure;
- (5) repair; and
- (6) encapsulation;

of asbestos containing material by conducting an inspection of the site of an asbestos project being carried out by the licensed asbestos contractor.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-8 ----- Regulation of asbestos and asbestos contractors: governmental entity may not accept bid of unlicensed contractor**

A political subdivision or a state agency may not accept a bid for an asbestos project from a person that does not hold an asbestos contractor license.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-9 ----- Regulation of asbestos and asbestos contractors: inspection and investigation by commissioner**

The commissioner may do the following:

- (1) Inspect the site of an asbestos project:
  - (A) during the project; or
  - (B) after the project is completed.
- (2) Conduct an investigation of an asbestos project upon:
  - (A) the commissioner's own initiation; or
  - (B) the receipt of a complaint by a person.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-6-10 ----- Regulation of asbestos and asbestos contractors: notice of injunction**

(a) If the commissioner finds that an asbestos project is not being performed in accordance with air pollution control laws or rules adopted under air pollution control laws, the commissioner may enjoin further work on the asbestos project without prior notice or hearing by delivering a notice to:

- (1) the asbestos contractor engaged in the asbestos project; or
- (2) the agent or representative of the asbestos contractor.

(b) A notice issued under this section must:

- (1) specifically enumerate the violations of law that are occurring on the asbestos project; and
- (2) prohibit further work on the asbestos project until the violations enumerated under subdivision (1) cease and the notice is rescinded by the commissioner.

(c) Not later than ten (10) days after receiving written notification from a contractor that violations enumerated in a notice issued under this section have been corrected, the commissioner shall issue a determination whether or not to rescind the notice.

(d) An asbestos contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the commissioner's action IC 4-21.5 and IC 4-21.5-7.

*[As amended by: P.L.25-1997, §8.]*

**IC 13-17-6-11 ----- Regulation of asbestos and asbestos contractors: reprimand of asbestos contractor or worker; suspension or revocation of license or accreditation**

(a) The commissioner may under IC 4-21.5 reprimand an asbestos contractor or asbestos worker or suspend or revoke the license of an asbestos contractor or the accreditation of an asbestos worker for the following reasons:

- (1) Fraudulently or deceptively obtaining or attempting to obtain a license or accreditation under this chapter.
- (2) Failing to meet the qualifications for a license or accreditation or failing to comply with the requirements of air pollution control laws or rules adopted under air pollution control laws.

- (3) Failing to meet an applicable federal or state standard for the abatement, removal, or encapsulation of asbestos.
- (b) The commissioner may under IC 4-21.5 reprimand an asbestos contractor or suspend or revoke the license of an asbestos contractor that does any of the following:
  - (1) Employs a person who is not accredited under this chapter.
  - (2) Permits a person who is not accredited under this chapter to work on an asbestos project.

*[As added by: P.L.1-1996, §7.]*

#### **IC 13-17-6-12 ----- Regulation of asbestos and asbestos contractors: asbestos requirements and exceptions thereto**

(a) Except as provided in subsections (c) and (d), a person that enters into a contract providing for the person to execute, for compensation, an asbestos project must hold an asbestos contractor's license.

(b) Except as provided in subsections (c) and (d), an individual who works on an asbestos project must be accredited under this chapter.

(c) In an emergency that results from a sudden and unexpected event that is not a planned renovation or demolition, the commissioner may waive the requirements set forth in subsections (a) and (b) for a person that enters into a contract or works to resolve the emergency.

(d) The commissioner may:

- (1) exempt an employer from subsection (a); and
- (2) exempt the employer's employees from subsection (b) with respect to an asbestos project on premises owned or leased by the employer;

if the commissioner determines that the employer has adopted and is enforcing an asbestos safety program that is adequate to protect the health and safety of the employees and of any other persons who are or may be affected by the asbestos project.

*[As added by: P.L.1-1996, §7.]*

#### **IC 13-17-7. CLEAN AIR ACT (CAA) PERMIT COMPLIANCE PROGRAM**

##### **IC 13-17-7-1 ----- CAA permit compliance program: liability for failure to obtain certain permits limited to that provided in this chapter**

Except as otherwise provided in this chapter, if a person:

- (1) constructed, reconstructed, modified, or operated a facility or source that emits or is capable of emitting into the atmosphere a regulated pollutant in an amount for which:
  - (A) a registration;
  - (B) a construction permit; or
  - (C) an operating permit;
 is required under IC 13-30-2-1(7) and rules adopted by the board under IC 13-15-1-1;
- (2) fails to obtain the:
  - (A) registration;
  - (B) construction permit; or
  - (C) operating permit;
 as required by Indiana law;
- (3) meets the conditions described in section 2 of this chapter; and

(4) pays a civil penalty described in section 6 of this chapter; the person's failure to obtain the registration, construction permit, or operating permit does not result in any liability beyond the liability described in this chapter.

[As added by: P.L.1-1996, §7.]

**IC 13-17-7-2 ----- CAA permit compliance program: conditions necessary for a person to qualify for exemption from liability**

(a) All of the following conditions must be satisfied for a person to qualify for the exemption from liability established in section 1 of this chapter:

- (1) If the source is required to obtain a Title V operating permit, a complete permit application for a Title V operating permit, a FESOP, or an enforceable operating agreement that includes the existing and unpermitted facility or source is submitted to the commissioner not later than November 16, 1996, or a date established by the board for timely submission of an application for a Title V operating permit, whichever is earlier. The permit application submitted under this subdivision must comply with:

(A) the requirements of 40 CFR 70.5(a)(2); and

(B) all rules adopted by the board implementing 40 CFR 70.5(a)(2).

- (2) If the source is not required to obtain a Title V operating permit, a complete application for a registration or construction permit, as applicable, for the existing and unpermitted facility or source is submitted to the commissioner not later than November 16, 1996. The registration or construction permit application must comply with all rules adopted by the board.

- (3) Each existing emitting facility or source for which limited liability is claimed under this chapter is clearly identified in the application submitted under subdivision (1) or (2), whichever is applicable.

- (4) The emitting facility or source was constructed or modified before January 1, 1994.

- (5) The emitting source was not the subject of a completed administrative or civil action for failure to obtain a necessary air construction or operation permit:

(A) after January 1, 1989; and

(B) before January 1, 1994.

- (6) The source is not the subject of a pending administrative or civil action for failure to obtain a necessary air construction or operation permit.

- (b) The department may not require:

- (1) a separate registration application;
- (2) a construction permit application; or
- (3) an additional operating permit application;

if the Title V operating permit application submitted for the sources or facilities qualifying for an exemption from liability under section 1 of this chapter and identified under subsection (a)(3) contains information that satisfies all requirements of the rules adopted by the board and all Indiana statutes concerning new or modified sources and facilities.

- (c) This section does not relieve a person from any obligation to:

- (1) apply for or obtain a permit required for the prevention of significant deterioration or by new source review requirements of the federal Clean Air Act under 42 U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D); or
- (2) obtain a registration or construction permit required under an Indiana law or rules adopted by the board.

[As added by: P.L.1-1996, §7.]

**IC 13-17-7-3 ----- CAA permit compliance program: situations where exemption from liability is inapplicable**

This chapter does not do any of the following:

- (1) Limit the scope of a person's liability for criminal penalties under IC 13-30-4, IC 13-30-5, IC 13-30-6, and IC 13-30-8.
- (2) Excuse or prohibit enforcement of violations of any state or federal health based or technology based standard, including national primary and secondary ambient air quality standards.
- (3) Excuse a facility or source for failure to obtain in advance a construction permit required by the prevention of significant deterioration or new source review requirements of the federal Clean Air Act under 42 U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D).
- (4) Apply to an individual facility at a source:
  - (A) that has potential emissions of more than one hundred (100) tons per year of any regulated pollutant;
  - (B) to which the board had established permit requirements under rules in effect on January 1, 1994; and
  - (C) that never received an operating permit under 326 IAC 2-1-4 as in effect on January 1, 1994.

[As added by: P.L.1-1996, §7.]

**IC 13-17-7-4 ----- CAA permit compliance program: inapplicability to resolved or settled enforcement actions**

An enforcement action that has been resolved or settled with the commissioner or any other person may not be reopened on the basis of this chapter.

[As added by: P.L.1-1996, §7.]

**IC 13-17-7-5 ----- CAA permit compliance program: civil action to enjoin or abate emissions**

A private citizen, the commissioner, the governor, or the attorney general may initiate a civil action under:

- (1) IC 13-14-10-2;
- (2) IC 13-15-3-6;
- (3) IC 13-17-4;
- (4) IC 13-30-1-1 through IC 13-30-1-7;
- (5) IC 13-30-3-2 through IC 13-30-3-9; or
- (6) IC 34-19-1-2;

whichever is applicable, to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.

[As amended by: P.L.1-1998, §105.]

**IC 13-17-7-6 ----- CAA permit compliance program: amount of limited civil penalty**

The sole civil penalty for a failure to possess a permit or registration as described in section 1 of this chapter, regardless of the number of facilities identified in the application filed under section 2 of this chapter, is as follows:

- (1) For a person who submits a timely and complete Title V operating permit application under section 2 of this chapter:
  - (A) three thousand dollars (\$3,000); and
  - (B) an amount equal to the amount charged for an annual operation fee for all

facilities or sources owned or operated by the person that should have been permitted or registered based on fees established for 1993 in 326 IAC 2-1-7.1(a)(4) or 326 IAC 2-1-7.1(a)(5).

- (2) For a person who submits a timely and complete application for a FESOP, an enforceable operating agreement under section 2(a)(1) of this chapter, or a timely and complete application for a registration or construction permit under section 2(a)(2) of this chapter:
  - (A) two thousand dollars (\$2,000); and
  - (B) an amount equal to the amount charged for an annual operation fee for all facilities or sources owned or operated by that person that should have been permitted or registered based on fees established for 1993 in 326 IAC 2-1-7.1(a)(4) or 326 IAC 2-1-7.1(a)(5).

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-7-7 ----- CAA permit compliance program: limits on the limitation on liability**

The limitation on liability provided under section 1 of this chapter only applies to an administrative or a judicial enforcement action brought against a person for failure to possess a valid state construction permit, operating permit, or registration. This chapter does not apply to any other type of violation.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-7-8 ----- CAA permit compliance program: APCB may adopt rules to implement**

The board may adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-8. TITLE V OPERATING PERMIT PROGRAM, TRUST FUND, AND FEES**

#### **IC 13-17-8-1 ----- Title V operating permit program: Title V operating permit trust fund**

(a) The Title V operating permit program trust fund is established to provide a source of money for the implementation, enforcement, and administration of the operating permit program required to implement 42 U.S.C. 7661 through 7661f of the federal Clean Air Act, as provided in sections 2 through 9 of this chapter.

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:

- (1) Fees collected under the operating permit program required to implement 42 U.S.C. 7661 through 7661f.

- (2) Appropriations made by the general assembly.

(f) Money in the fund may be used only to pay the costs of the operating permit program activities described in section 3 of this chapter.

(g) Revenues that accrue to the fund are appropriated to the department for the purposes described in section 3 of this chapter.

[As added by: P.L.1-1996, §7.]

**IC 13-17-8-2 ----- Title V operating permit program: collection of Title V fees**

(a) The owner or operator of a source subject to the requirement to obtain a permit necessary to implement 42 U.S.C. 7661 through 7661f shall pay a fee determined by the board under rules adopted under IC 4-22-2.

(b) The department shall do the following:

- (1) Collect the fees described in subsection (a).
- (2) Deposit the fees in the Title V operating permit program trust fund.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-8-3 ----- Title V operating permit program: establishing Title V fee amounts by APCB**

The air pollution control board shall adopt fees to be collected under the operating permit program. The annual aggregate amount of fees collected under the operating permit program from all sources subject to the operating permit program must be sufficient to cover only the direct and indirect reasonable costs of the following permit program activities:

- (1) Preparing rules, regulations, and guidance regarding implementation and enforcement of the program.
- (2) Reviewing and acting on the following:
  - (A) An application for an operating permit.
  - (B) An operating permit revision.
  - (C) An operating permit renewal.
- (3) The general administrative cost of running the operating permit program.
- (4) Implementing and enforcing the terms of a permit granted under the operating permit program. However, court costs for enforcement actions are not included under this subdivision.
- (5) Emissions and ambient monitoring.
- (6) Modeling analyses and demonstrations.
- (7) Preparing inventories and tracking emissions.
- (8) Developing and administering a small business stationary source technical and environmental compliance assistance program.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-8-4 ----- Title V operating permit program: items which may be included in fee structure**

The fee structure established under section 3 of this chapter may include any of the following:

- (1) The placement of persons described in section 2(a) of this chapter into categories.
- (2) Fee amounts based on the amount and type of emissions if:
  - (A) maximum; and
  - (B) minimum or base;
 fee amounts are included as part of the fee structure.
- (3) Fee amounts based on the cost of performing the activities described in section 3 of this chapter.
- (4) A maximum fee amount for each source described in section 2(a) of this chapter;
- (5) A base or minimum fee for each source described in section 2(a) of this chapter.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-8-5 ----- Title V operating permit program: applicability of fee structure**

The fee structure established under section 3 of this chapter applies to each source subject to the requirement to obtain a permit required to implement 42 U.S.C. 7661 through 7661f.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-8-6 ----- Title V operating permit program: limits on initial fee structure**

The following apply to the initial fee structure established under section 3 of this chapter:

- (1) Except as provided in subdivision (2), the initial fee structure may not include a fee for a source that exceeds one hundred fifty thousand dollars (\$150,000) in each year.
- (2) For a source that:
  - (A) is located in an area designated as a serious or severe ozone nonattainment area under the federal Clean Air Act; and
  - (B) emits more than:
    - (i) one hundred (100) tons of volatile organic compounds; and
    - (ii) one hundred (100) tons of nitrogen oxides;

the initial fee structure may not include a fee that exceeds two hundred thousand dollars (\$200,000) in each year.
- (3) Except as provided in subdivision (4), during the period:
  - (A) after December 31, 1994; and
  - (B) before January 1, 2000;

the fee structure may not be attributable to the amount or type of emissions from a steam electric generating unit that is an affected unit under 42 U.S.C. 7651c.
- (4) During the period described in subdivision (3), the total annual fee for affected units at a source that contains at least one (1) affected unit described in subdivision (3) may not exceed fifty thousand dollars (\$50,000). Fees paid for the source under the fee structure established in section 3 of this chapter shall be credited toward the amount of the fee that the source is required to pay under this subdivision.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-8-7 ----- Title V operating permit program: limits on fee increases or decreases**

(a) Except as provided in section 8 of this chapter, this section applies to an increase or a decrease in the fees described in this chapter:

- (1) based on the Consumer Price Index (CPI), consistent with 42 U.S.C. 7661a; or
  - (2) necessary to provide adequate revenue to fund all activities described under section 3 of this chapter.
- (b) The increase or decrease shall be made equally and proportionately to all:
- (1) minimum fees;
  - (2) base fees;
  - (3) maximum fees;
  - (4) cost of service fees; and
  - (5) emission based fees;

established as described in this chapter or as revised by the board.

*[As added by: P.L.1-1996, §7.]*

**IC 13-17-8-8 ----- Title V operating permit program: exception to limitations on fee increases**

The requirement for equal and proportionate increases does not apply to adjustments to cost of service based fees that are:

- (1) the result of increased activities described under section 3 of this chapter; and
- (2) attributable to federal mandates related to particular types or categories of sources.

[As added by: P.L.1-1996, §7.]

**IC 13-17-8-9 ----- Title V operating permit program: annual accounting to U.S. EPA**

The commissioner shall provide the Administrator of the United States Environmental Protection Agency with an annual accounting of:

- (1) the receipt of operating permit fees; and
- (2) the expenditure of money in the fund under this chapter;

to demonstrate that operating permit fees are used solely to support the operating permit program.

[As added by: P.L.1-1996, §7.]

**IC 13-17-8-10 ----- Title V operating permit program: application shield**

(a) This section applies to the issuance or denial of an operating permit under the operating permit program established under 42 U.S.C. 7661 through 7661f.

(b) If:

- (1) an applicant has submitted a timely and complete application for a permit required under the operating permit program; and
- (2) final action has not been taken on the application;

the applicant's failure to have a permit is not a violation of this article until after final agency action is taken on the permit application.

[As added by: P.L.1-1996, §7.]

**IC 13-17-9. OPEN BURNING****IC 13-17-9-1 ----- Open burning: specified burning allowable with permit or other authorization**

(a) Subject to section 3 of this chapter, a person may open burn the following for maintenance purposes:

- (1) Vegetation from a farm, an orchard, a nursery, a tree farm, a cemetery, or a drainage ditch.
- (2) Wood products derived from pruning or clearing a roadside by a county highway department.
- (3) Wood products derived from the initial clearing of a public utility right-of-way if the open burn occurs in an unincorporated area.
- (4) Undesirable:
  - (A) wood structures on real property; or
  - (B) wood remnants of the demolition of a predominantly wooden structure originally located on real property;

located in an unincorporated area.

(b) A person who is allowed to open burn under subsection (a) is not required to obtain:

- (1) a permit; or
- (2) any other authorization;

from the department, a unit of local government, or a volunteer fire department before conducting the open burning.

[As amended by: P.L.1-1999, §35.]

### **IC 13-17-9-2 ----- Open burning: burning of certain railroad items**

Subject to section 3 of this chapter, a person may open burn clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad rights-of-way. A person may not open burn railroad ties.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-9-3 ----- Open burning: conditions for compliance with chapter**

All open burning that is allowed under this chapter must comply with the following conditions:

- (1) A person who open burns any material shall extinguish the fire if the fire creates a nuisance or fire hazard.
- (2) Burning may not be conducted during unfavorable meteorological conditions such as high winds, temperature inversions, or air stagnation.
- (3) All fires must be attended at all times during burning until completely extinguished.
- (4) All asbestos containing materials must be removed before the burning of a structure.
- (5) Asbestos containing materials may not be burned.
- (6) Except as provided under section 1 of this chapter, all burning must comply with state and federal laws.

[As added by: P.L.1-1996, §7.]

## **IC 13-17-10. INCINERATION OF PCB**

### **IC 13-17-10-1 ----- Incineration of PCBs: prerequisites to**

A person may not incinerate PCB in an incinerator unless the person:

- (1) holds a permit issued by the commissioner specifically authorizing the incineration of PCB in the incinerator; and
- (2) has received the recommendation of the local plan commission that has jurisdiction over the area in which the incinerator is located and the county executive of the county in which the incinerator is located has approved the incineration of the PCB or, if an appropriate local plan commission does not exist, the county executive of the county in which the incinerator is located has approved the incineration of the PCB.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-10-2 ----- Incineration of PCBs: additional prerequisite**

The commissioner may not:

- (1) issue; or
- (2) consider an application for;

a permit specifically authorizing the incineration of PCB until the study required by section 3 of this chapter is concluded.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-10-3 ----- Incineration of PCBs: study of alternative PCB technologies**

The department, in cooperation with the United States Environmental Protection Agency, an applicant for a permit issued under this chapter, and a city or town in which an incinerator described under section 1 of this chapter is or will be located, shall conduct a study of alternative PCB technologies. The study must include an assessment of the efficacy and the technical and economic feasibility of the following:

- (1) Alternative technologies such as the following:
  - (A) The application of lime to break down PCB.
  - (B) The low temperature thermal desorption process.
  - (C) Desorption and vaporization extraction.
  - (D) Plasma torch technology.
  - (E) Bacterial remediation.
- (2) Other technologies identified by the commissioner as having possible value in the treatment or disposal of PCB in Indiana.

*[As added by: P.L.1-1996, §7.]*

#### **IC 13-17-10-4 ----- Incineration of PCBs: deadline for study; report**

(a) The study required by section 3 of this chapter must be concluded before January 1, 1996.

(b) At the conclusion of the study the commissioner shall prepare a report setting forth the results of the study. The commissioner shall:

- (1) present the report to:
  - (A) the governor; and
  - (B) the general assembly; and
- (2) make copies of the report available to the public.

*[As added by: P.L.1-1996, §7.]*

#### **IC 13-17-11. THERMAL OXIDATION UNIT PERMITS**

##### **IC 13-17-11-1 ----- Thermal oxidation units: no applicability to on-site operation**

This chapter does not apply to a thermal oxidation unit that would be used by a person that:

- (1) generates soil contaminated by petroleum or a petroleum byproduct at a site owned or operated by the person; and
- (2) remediates the soil at the same site.

*[As added by: P.L.1-1996, §7.]*

##### **IC 13-17-11-2 ----- Thermal oxidation units: applicability to Lake and Porter counties**

The department may not issue a permit for the construction or the operation of a thermal oxidation unit that would be used only to remediate soil contaminated by petroleum or a petroleum byproduct if the thermal oxidation unit would be constructed or operated in a county that:

- (1) has a population of:
  - (A) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
  - (B) more than one hundred twenty-five thousand (125,000) but less than one hundred twenty-nine thousand (129,000); and
- (2) is located in an air quality control area that has been classified as a nonattainment area under the federal Clean Air Act (42 U.S.C. 7401 et seq.);

unless it can be demonstrated that the thermal oxidation unit is in compliance with a state implementation plan submitted under Section 182 of the federal Clean Air Act (42 U.S.C. 7511a).

*[As added by: P.L.1-1996, §7.]*

## **IC 13-17-12. ENFORCEMENT OF LOCAL AIR POLLUTION ORDINANCES**

### **IC 13-17-12-1 ----- Enforcement of local air pollution ordinances: local units not prohibited from enforcing certain local ordinances**

Air pollution control laws do not prevent towns, cities, or counties from:

- (1) enforcing local air pollution ordinances consistent with air pollution control laws; or
- (2) adopting or enforcing more restrictive ordinances to further the expressed purposes of air pollution control laws.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-12-2 ----- Enforcement of local air pollution ordinances: adoption and enforcement of county air pollution ordinances authorized**

(a) For the maintenance of the quality of the air resource, a county may adopt and enforce ordinances controlling air pollution.

(b) In a county not having a consolidated city, the ordinances may not include municipalities with an air pollution ordinance under air pollution control laws.

(c) In a county having a consolidated city, a county air pollution ordinance may apply throughout the entire county, including territory inside the corporate boundaries of excluded cities.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-12-3 ----- Enforcement of local air pollution ordinances: local administration of air pollution control program**

A town, city, or county within an air quality basin may administer its air pollution control program in cooperation with one (1) or more towns, cities, or counties of Indiana in accordance with IC 36-1-7. However, a county having a consolidated city is not required to enter into an agreement under IC 36-1-7 to regulate air pollution inside an excluded city in the county.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-12-4 ----- Enforcement of local air pollution ordinances: annual reports**

An air pollution control agency shall submit annual reports as requested by the department.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-12-5 ----- Enforcement of local air pollution ordinances: failure to enforce local ordinance**

If:

- (1) an air quality jurisdiction; or
- (2) an administrator of an air quality jurisdiction;

fails to enforce a local ordinance that affords protection to the public equal to that provided by state law, the department may, after consultation with the jurisdiction or administrator, take appropriate action necessary to enforce applicable provisions of state law.

*[As added by: P.L.1-1996, §7.]*

### **IC 13-17-12-6 ----- Enforcement of local air pollution ordinances: Indianapolis authorized to establish Title V operating permit program**

A county having a consolidated city may, subject to department approval, establish an air permit program that complies with:

- (1) the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549);

- (2) regulations implementing Title V of the Clean Air Act Amendments of 1990 (40 CFR 70 et seq.); and
- (3) rules adopted by the board.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-13. ENFORCEABLE OPERATING AGREEMENT PROGRAM**

#### **IC 13-17-13-1 ----- Enforceable operating agreement program: APCB may adopt rules to authorize**

The air pollution control board may adopt rules under IC 4-22-2 to establish categories of sources or facilities that may be effectively restricted through specific requirements established by the rules to emit less than the amount of air pollutants for which a Title V air operating permit is required.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-13-2 ----- Enforceable operating agreement program: IDEM to recommend rules to establish**

For categories established under section 1 of this chapter, the department shall recommend rules to establish an enforceable operating agreement program. The program established under this section may apply to some or all of the sources or facilities within the categories. Rules adopted under this section must be approved by the United States Environmental Protection Agency.

[As added by: P.L.1-1996, §7.]

#### **IC 13-17-13-3 ----- Enforceable operating agreement program: annual report**

(a) The department shall provide an annual report to the following:

- (1) The board.
- (2) The environmental quality service council.

(b) The report must include a summary of the:

- (1) reviews conducted; and
- (2) agreements approved;

in the preceding year under this chapter.

[As added by: P.L.1-1996, §7.]

### **IC 13-17-14. LEAD-BASED PAINT ACTIVITIES**

#### **IC 13-17-14-1 ----- Lead-based paint activities: applicability**

(a) This chapter does not apply to the following:

- (1) A person making an inspection under the authority of IC 22-8-1.1.
- (2) A person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by:
  - (A) a person, other than the owner or the owner's immediate family, while these activities are being performed; or
  - (B) a child who:
    - (i) is not more than six (6) years of age or an age specified in rules adopted by the board under section 5 of this chapter; and
    - (ii) resides in the building and has been identified as having an elevated blood lead level.

(b) This chapter may not be construed as requiring the abatement of lead-based paint hazards in a child-occupied facility or target housing.

[As added by: P.L.123-1997, §11.]

#### **IC 13-17-14-2 ----- Lead-based paint activities: program established; purpose**

The lead-based paint activities program is established. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child-occupied facilities, and any other type of building that the board specifies in rules adopted under section 5 of this chapter does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than six (6) years of age.

[As added by: P.L.123-1997, §11.]

#### **IC 13-17-14-3 ----- Lead-based paint activities: licenses**

(a) A person that engages in lead-based paint activities must obtain a license under this chapter and under rules adopted by the board under section 5 of this chapter.

(b) A person may receive a lead-based paint activities license under this chapter for the following disciplines:

- (1) Inspector.
- (2) Risk assessor.
- (3) Project designer.
- (4) Supervisor.
- (5) Abatement worker.
- (6) Contractor.

(c) A person that enters into a contract requiring the person to execute for compensation lead-based paint activities shall hold a lead-based paint activities contractor's license.

(d) A person shall:

- (1) take required training and pass an examination provided in a lead-based paint training course approved by the department;
- (2) pass an examination provided by the department or a third party as required by rules adopted by the board under section 5 of this chapter; and
- (3) meet any requirements established by rules adopted by the board under section 5 of this chapter;

before a person may receive a lead-based paint activities license.

(e) The department may issue a license for a position listed under subsection (b) if the applicant submits proof to the department that the applicant satisfies the training, examination, and other requirements for the license under this chapter.

(f) A person who holds a license for a position listed in subsection (b) must complete periodic refresher training and pass any re-examination required by rules adopted under section 5 of this chapter.

(g) A lead-based paint activities contractor licensed under this chapter may not allow an agent or employee of the contractor to:

- (1) exercise control over a lead-based paint activities project;
- (2) come into contact with lead-based paint; or
- (3) engage in lead-based paint activities;

unless the agent or employee is licensed under this chapter.

(h) A person engaging in lead-based paint activities shall comply with the work practice standards established in rules adopted by the board under section 5 of this chapter for performing the appropriate lead-based paint activities.

[As added by: P.L.123-1997, §11.]

**IC 13-17-14-4 ----- Lead-based paint activities: training**

(a) A lead-based paint activities training program must meet requirements specified in rules adopted by the board under section 5 of this chapter before providing initial or refresher training to a person seeking a license listed in section 3(b) of this chapter.

(b) The department may approve a lead-based paint activities training course offered by a person that satisfies the requirements of subsection (a).

(c) A lead-based paint activities training course must be conducted by an instructor approved by the department as provided in the rules adopted by the board under section 5 of this chapter.

*[As added by: P.L.123-1997, §11.]*

**IC 13-17-14-5 ----- Lead-based paint activities: APCB shall adopt rules**

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 to implement this chapter. The rules must contain at least the elements required to receive program authorization under 40 CFR 76, Subpart L and must do the following:

- (1) Establish minimum requirements for the issuance of a license for lead-based paint activities inspectors, risk assessors, project designers, supervisors, abatement workers, and contractors.
- (2) Establish minimum requirements for approval of the providers of lead-based paint activities training courses.
- (3) Establish minimum qualifications for lead-based paint activities training course instructors.
- (4) Extend the applicability of the licensing requirements to other facilities as determined necessary by the board.
- (5) Establish work practice standards.
- (6) Establish a department or third-party examination process.
- (7) Identify activities, if any, that are exempted from licensing requirements.
- (8) Establish a fee of not more than one hundred fifty dollars (\$150) per person, per license, per year for a person seeking a license under section 3 of this chapter. However, the following may not be required to pay a fee established under this subdivision:
  - (A) A state.
  - (B) A municipal corporation (as defined in IC 36-1-2-10).
  - (C) A unit (as defined in IC 36-1-2-23).
- (9) Establish a fee of not more than one thousand dollars (\$1,000) per course, per year, for a lead-based paint training program seeking approval of a lead-based paint training course under section 4 of this chapter. However, the following may not be required to pay a fee established under this subdivision:
  - (A) A state.
  - (B) A municipal corporation (as defined in IC 36-1-2-10).
  - (C) A unit (as defined in IC 36-1-2-23).
  - (D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(b) The amount of the fees under subsection (a) may not be more than is necessary to recover the cost of administering this chapter.

(c) The proceeds of the fees under subsection (a) must be deposited in the lead trust fund established by section 6 of this chapter.

*[As amended by: P.L.111-1999, §1.]*

**IC 13-17-14-6 ----- Lead-based paint activities: lead trust fund established**

(a) The lead trust fund is established to provide a source of money for the purposes set forth in subsection (f).

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:

- (1) License fees established under section 5 of this chapter.
- (2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.
- (3) Penalties imposed under IC 13-30-4 and IC 13-30-5 for violations of this chapter and rules adopted under this chapter concerning lead-based paint activities.

(f) The department may use money in the fund to do the following:

- (1) Pay the expenses of administering this chapter.
- (2) Cover other costs related to implementation of 40 CFR 745 for lead-based paint activities in target housing and child occupied facilities.

[As added by: P.L.123-1997, §11.]

**IC 13-17-14-7 ----- Lead-based paint activities: recordkeeping**

(a) A lead-based paint activities contractor licensed under this chapter shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records must include the following information on each lead-based paint activities project:

- (1) The name, address, and proof of license of the following:
  - (A) The person who supervised the lead-based paint activities project for the lead-based paint activities contractor.
  - (B) Each employee or agent of the lead-based paint activities contractor that worked on the project.
- (2) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.
- (3) The site of the lead-based paint activities project.
- (4) A description of the lead-based paint activities project.
- (5) The date on which the lead-based paint activities project was started and the date on which the lead-based paint activities project was completed.
- (6) A summary of procedures that were used in the lead-based paint activities project to comply with applicable federal and state standards for lead-based paint activities projects.
- (7) A detailed written description of the lead-based paint activities, including methods used, locations of rooms or components where lead-based paint activities occurred, reasons for selecting particular lead-based paint activities methods for each component, and any suggested monitoring of encapsulants or enclosures.
- (8) The occupant protection plan.
- (9) The results of clearance testing and all soil analysis (if applicable) and the name of each federally-approved laboratory that conducted the analysis.
- (10) The amount of material containing lead-based paint that was removed from the site of the project.

(11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.

(b) A copy of each receipt issued by a disposal site identified under subsection (a)(11) must be included in the records concerning the lead-based paint activities project that are compiled under this section.

(c) A lead-based paint activities contractor shall retain the records compiled under this section concerning a particular lead-based paint activities project for at least three (3) years after the lead-based paint activities project is concluded.

(d) A lead-based paint activities contractor shall make records kept under this section available to the department upon request.

*[As added by: P.L.123-1997, §11.]*

### **IC 13-17-14-8 ----- Lead-based paint activities: prohibition**

A political subdivision or a state agency may not accept a bid for a lead-based paint activities project from a person that does not hold a lead-based paint activities license.

*[As added by: P.L.123-1997, §11.]*

### **IC 13-17-14-9 ----- Lead-based paint activities: inspections**

Without limiting the authority to inspect under IC 13-14-2-2, the commissioner may do the following:

- (1) Inspect the site of a lead-based paint activities project:
  - (A) during the project; or
  - (B) after the project is completed.
- (2) Conduct an investigation of a lead-based paint activities project upon:
  - (A) the commissioner's own initiation; or
  - (B) the receipt of a complaint by a person.
- (3) Conduct an investigation of the provider of a lead-based paint activities training course upon:
  - (A) the commissioner's own initiation; or
  - (B) the receipt of a complaint by a person.

*[As added by: P.L.123-1997, §11.]*

### **IC 13-17-14-10 ----- Lead-based paint activities: stop work notice; rescission; review**

(a) If the commissioner finds that a lead-based paint activities project is not being performed in accordance with air pollution control laws or rules adopted by the board, the commissioner may enjoin further work on the lead-based paint activities project without prior notice or hearing by delivering a notice to:

- (1) the lead-based paint activities contractor engaged in the lead-based paint activities project; or
- (2) an agent or representative of the lead-based paint activities contractor.

(b) A notice issued under this section must:

- (1) specify the violations of law that are occurring on the lead-based paint activities project; and
- (2) prohibit further work on the lead-based paint activities project until the violations specified under subdivision (1) cease and the notice is rescinded by the commissioner.

(c) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the commissioner shall issue a determination regarding rescission of the notice.

(d) A lead-based paint activities contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the commissioner's action under IC 4-21.5.

*[As added by: P.L.123-1997, §11.]*

### **IC 13-17-14-11 ----- Lead-based paint activities: violations; enforcement**

(a) The commissioner may under IC 4-21.5 reprimand, suspend, or revoke the license of a lead-based paint activities inspector, risk assessor, project designer, supervisor, worker, or contractor for any of the following reasons:

- (1) Violating any requirements of this chapter or rules adopted under this chapter.
- (2) Fraudulently or deceptively obtaining or attempting to obtain a license under this chapter.
- (3) Failing to meet the qualifications for a license or failing to comply with the requirements of air pollution control laws or rules adopted by the board.
- (4) Failing to meet an applicable federal or state standard for lead-based paint activities.

(b) The commissioner may under IC 4-21.5 reprimand a lead-based paint activities contractor or suspend or revoke the license of a lead-based paint activities contractor that employs a person who is not licensed under this chapter for a purpose that requires the person to hold a license issued under this chapter.

(c) The commissioner may under IC 4-21.5 revoke the approval of a lead-based paint activities training course for any of the following reasons:

- (1) Violating any requirement of this chapter.
- (2) Falsifying information on an application for approval.
- (3) Misrepresenting the extent of a training course's approval.
- (4) Failing to submit required information or notifications in a timely manner.
- (5) Failing to maintain required records.
- (6) Falsifying approval records, instructor qualifications, or other approval information.

*[As added by: P.L.123-1997, §11.]*

